Calendar No. 264

101ST CONGRESS
1st Session

SENATE

REPORT
101-143

NATIONAL AMERICAN INDIAN MUSEUM ACT

SEPTEMBER 27 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, and Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. 978]

The Committee on Rules and Administration and the Select Committee on Indian Affairs, to which were referred the bill (S. 978), a bill to authorize the establishment within the Smithsonian Institution of the National Museum of the American Indian, to establish a memorial to the American Indian, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 978 is to establish the National Museum of the American Indian within the Smithsonian Institution and to authorize the transfer of legal title to the collection of the Museum of the American Indian, Heye Foundation to the Smithsonian Institution, and to provide a process of identification for the human remains of Native Americans that are currently in the possession of the Smithsonian Institution.

BACKGROUND

Legislation to establish a National Museum that would serve as a living memorial to this nation's First Americans had its origins in a hearing that was held by the Select Committee on Indian Affairs in February of 1987. In his testimony on a bill to provide for the repatriation of Indian artifacts, Smithsonian Secretary Robert McCormick Adams indicated that of the 34,000 human remains currently in the Institution's collection, approximately 42.5% or

S683-13
S413-3

14,523 of the specimens are the remains of North American Indians, and another 11.9% or 4,061 of the specimens represent Eskimo, Aleut, and Koniag populations. Tribal reaction to Secretary Adams' testimony was swift, and in the months which followed, Indian tribes around the country called for the repatriation of those human remains that could be identified as associated with a specific tribe or region for their permanent disposition in accordance with tribal customs and traditions, and for the proper burial elsewhere of those remains of Native Americans that could not be so identified.

In response to the tribal initiatives, Senator Daniel K. Inouye, Chairman of the Senate Select Committee on Indian Affairs met with representatives of the National Capital Planning Commission to explore the feasibility of establishing a memorial to the American Indian on the national mall that could serve as a permanent resting place for those human remains of Native Americans in the Smithsonian's collection which were not the subject of ongoing scientific inquiry. Chairman Inouye was advised that the last remaining site on the mall has been reserved for the use of the Smithsonian Institution.

Learning of the Chairman's interest in establishing a memorial to the American Indian which might also include the establishment of an American Indian museum, the former Chairman of the Board of Trustees of the Museum of the American Indian, Heye Foundation of New York, Barber Conable, invited Senator Inouye to visit the facilities of the Museum of the American Indian in New York. Chairman Inouye toured the Museum and the Museum's research branch in April of 1987, accompanied by Smithsonian Secretary Adams, and met with representatives of the Museum's Board of Trustees.

The Museum of the American Indian was created by the trust indenture of the late George Gustav Heye, established in 1916 to provide for the preservation of his personal collection of over one million Native American artifacts collected over a period of sixty years. Although Mr. Heye also endowed the trust with a sum from which accrued interest could be used to maintain the collection, the endowment was insufficient to cover the costs of the Museum's operation, and during Heye's lifetime, he supplemented the endowment with personal funds. Today, the collection has doubled in size, and the income from the trust (approximately $400,000 annually) is inadequate to meet the Museum's annual operating costs of $1.5 million. Private financial support to supplement the Museum's resources has also been insufficient to assure that the collection can be adequately preserved, and there is concern that many priceless artifacts are approaching an irreversible state of deterioration. The Museum's current facilities, located in west Harlem, provide display capacity for approximately four percent of the collection, while over 95 percent of the collection is housed in the Museum's research branch, located in a warehouse in the Bronx.

Legislation was introduced in the 100th Congress to authorize the creation of the National Museum of the American Indian within the Smithsonian Institution in which there was to have been a living memorial to the American Indian established, and to make the priceless Native American collection of the Heye Founda-

tion available to the Smithsonian Institution. Also contemplated in the bill was the transfer of the sizeable Native American collection of the Department of the Interior to the Smithsonian, and the operation of a museum facility in the Old United States Custom House located at One Bowling Green in New York City. Although favorably reported by the Selected Committee on Indian Affairs and the Committee on Rules and Administration, S. 1722 was not considered by the full Senate in the final days of the 100th Congress because of a failure to achieve a consensus on specific provisions of the bill.

While consensus on the Indian Museum proposal was not achieved before the expiration of the 100th Congress, negotiations between the Smithsonian Institution and the Heye Foundation of New York continued during the early part of 1989, and on May 8, 1989, the Board of Regents of the Smithsonian Institution announced their approval of an agreement with the Heye Foundation Board of Trustees which provides for the conveyance of the collections of the Museum of the American Indian, Heye Foundation to the Smithsonian Institution. Legislation to implement the agreement (S. 978) was introduced by Senator Inouye, for himself and Senators Ford, Kassebaum, Domenici, Packwood, Baucus, Burdick, Daschle, Cochran, McCain, Gorton, Rudman, Kennedy, Adams, Conrad, D'Amato, Hatfield, Burns, Bradley, Riegle, Simon, Pressler, DeConcini, Murkowski, Sanford, Dodd, Wirth, Matsunaga, Reid, Bingaman, Kerrey, Stevens, Kohl, Metzenbaum, Moynihan, Dole, Pell, Kerry, Levin, Harkin, Boren and Biden on May 11, 1989. S. 978 was referred to the Committee on Rules and Administration and the Select Committee on Indian Affairs.

A joint hearing of the Committee on Rules and Administration and the Select Committee on Indian Affairs was held on May 12, 1989. S. 978 was considered and ordered reported by the Select Committee on Indian Affairs on May 14, 1989, and on May 17, 1989, the bill was considered and ordered reported by the Committee on Rules and Administration.

SUMMARY OF MAJOR PROVISIONS

S. 978 provides authority for the Board of Regents of the Smithsonian Institution to establish a National Museum of the American Indian on a site on the national mall that was earlier reserved by Act of Congress for the use of the Smithsonian Institution and which lies between the Air and Space Museum and the Botanic Gardens. A Board of Trustees to be initially composed of 15 members of the Heye Foundation Board of Trustees and 8 members to be appointed by the Board of Regents will provide a direct governance structure for the National Museum. S. 978 proposes membership on the Board of Trustees of persons of American Indian and Alaska Native ancestry.

The terms of the trust indenture established by George Gustav Heye on May 10, 1916 provided that there should be some means for carrying out the objects and purposes of the trust in the state of New York. To satisfy the terms of the Heye trust and to assure the conveyance of the Heye collection, the Smithsonian Institution has made a commitment to operate a museum facility in the City of

New York. The conveyance agreement between the Smithsonian Institution and the Heye Foundation Board of Trustees contemplates that the New York Attorney General and Heye attorneys will petition the New York court having jurisdiction over trust instruments to allow the transfer of the Heye collection to the Smithsonian Institution, provided that a presence of the Heye collection is maintained in New York. Thus the legislation also provides authority for the Smithsonian to enter into an agreement with the General Services Administration for the use of space in the Old United States Custom House in New York City, so that a museum facility that will be part of the National Museum system to be known as the George Gustav Heye Center of the National Museum of the American Indian can be operated in New York.

A third feature of the bill provides authority for the Smithsonian Institution to enter into agreements with museums, educational institutions, and cultural organizations to loan Native American artifacts and objects from the collection of the National Museum of the American Indian, to sponsor and coordinate a variety of traveling exhibitions, and to provide training and technical assistance. The concept was derived from a bill introduced by Senator Jeff Bingaman in the 100th Congress, which also provided for the establishment of new museums in various regions of the country that would be affiliated with the National Indian Museum, and which further provided for extensive educational and curational activities. Senator Bingaman's bill was supported by Secretary Adams' statement to the Committees in November of 1987 that, "The collection is so rich that it seems possible to make provision for a truly unparalleled series of traveling exhibitions for other cities, rural communities, and particularly, Indian reservations and pueblos. Training opportunities built into the museum's program would provide access to the collection for Indian people, as well as others, while Indians working with the collection would add to the sum of our knowledge of it through their identification and interpretation of the material." While these are significant aspects of the Museum's overall program and should be considered of the highest priority, it is understood that they cannot be initiated until the Museum itself is established.

In addition, S. 978 provides authority for the Board of Regents of the Smithsonian Institution to identify the geographic and tribal origins of human remains of Indian and Alaska Natives in the collections of the Smithsonian Institution, to conduct a study and make recommendations as to the final disposition of such remains, to consult with Native American traditional religious leaders in making such recommendations, and to report to the Congress within three years following the date of enactment of the Act on the identity of Native American human remains and the findings and recommendations of the Institution's study.

AUDUBON TERRACE FACILITY

In providing for the relocation of the Heye collection, the Committees recognize the historical significance of the collection's current location at Audubon Terrace at 3753 Broadway, New York, New York.

In 1916, when George Gustav Heye could no longer accommodate his collection in his home, he turned to Archer Huntington, a philanthropist of the time, in search of a more fitting location. Mr. Huntington had purchased the John James Audubon farm in upper Manhattan with the vision of establishing a cultural center, comparable in significance to today's Lincoln Center. The Museum of the American Indian was an appropriate component of this plan, and became a research haven for the country's foremost scholars. While the collection may have outgrown the building at 155th Street and Broadway, Audubon Terrace will always be home to the dreams of George Gustave Heye and Archer Huntington.

In acknowledging Audubon Terrace's unique relationship to the Museum of the American Indian, the Committees expect that, although the Audubon Terrace facility will not be a museum or a branch museum of the Smithsonian, the Smithsonian would make every possible effort to maintain these cultural ties. On April 13, 1988, when the Committee considered S. 1722, predecessor legislation in the 100th Congress, provision was made to maintain the existing facility at Audubon Terrace. The Smithsonian's Board of Regents, at their meeting on May 8, 1989, at which they endorsed the Memorandum of Understanding with the Museum of the American Indian, Heye Foundation, approved the following statement: "The Board of Regents recognizes that the future use of the present facility at Audubon Terrace needs to be considered and the Smithsonian Institution will continue to work with the City of New York and the Heye Foundation on programming and related questions."

The Heye Foundation and the City of New York have indicated their support for maintaining a museum facility at Audubon Terrace. The legislation provides that the Smithsonian can enter into agreements with museums and other cultural institutions to loan Native American artifacts and objects for the Museum's collection, sponsor traveling exhibitions, and provide training and technical assistance.

The Committees would expect that, if a museum entity is the successor in interest to the Heye Foundation at Audubon Terrace, the Smithsonian would develop with it the same kinds of relationships it has with museums in other areas of the country. Specifically, the Committees expect that the Smithsonian would loan artifacts and exhibitions to such successor and provide training, technical assistance, and scholarship support. In addition, the Committees anticipate that the Institution will ensure that at least 2,000 square feet of space at Audubon Terrace is publicly accessible and physically suitable for museum activities and adjust fees associated with traveling exhibits according to a museum successor's ability to pay such fees. In this way, George Heye's legacy at Audubon Terrace could survive and flourish. However, it is the Committees' intent and understanding that operational funding for the Audubon Terrace facility is not the U.S. taxpayers' responsibility.

ADMINISTRATION POSITION

In testimony before the joint hearing of the Select Committee on Indian Affairs and the Committee on Rules and Administration on May 12, 1989, Smithsonian Secretary Adams indicated overall

strong support for the legislation, but expressed the Institution's opposition to a requirement that seven of the 25 members of the initial Board of Trustees of the National Museum of the American Indian and twelve of the 25 members of succeeding Boards of Trustees be of Indian or Alaska Native ancestry, on the grounds that Indian membership might be construed to be an unconstitutional racial classification. Although it is well-settled that Indians have a political government-to-government relationship with the United States based on the treaties that were entered into with Indian nations, and that preference in employment may be constitutionally extended to Indian people on that basis, the Congressional Research Service has prepared a memorandum on the issue which is set forth below. The Smithsonian also indicated opposition to a provision of the bill which authorizes the Secretary to designate existing museums as affiliates of the National Museum. The Select Committee on Indian Affairs adopted an amendment proposed by the Smithsonian to address their concerns with regard to this provision. The Smithsonian's written testimony also takes exception to a requirement that the Board of Trustees provide an annual report to the Congress which includes the proceedings of the Board of Trustees and a full account of the financial operations of the Board of Trustees for the preceding fiscal year. The section was included in the bill to enhance the accountability of the National Museum of the American Indian to the Congress. The Smithsonian Institution requests three amendments to the bill: (1) one that would allow them to charge an admission fee at the museum facility which is to be located in the Custom House; (2) an amendment which would place a limitation on the ability of the Congress to appropriate funds for the museum until such time as the Institution provides to the Congress and the Administration an analysis of the total estimated cost of construction and a cost-sharing plan projecting amounts for Federal appropriations and for non-Federal contributions; and (3) an amendment which would delete the authorization for the Board of Regents to consult with the Board of Trustees of the National Museum of the American Indian with regard to a study and recommendations regarding the final disposition of Native American skeletal remains in the possession of the Smithsonian Institution. These amendments were adopted by the Select Committee on Indian Affairs in its May 16, 1989 mark-up of S. 978.

The full text of Secretary Adams' statement to the Committees presented on May 12, 1989, on behalf of the Administration is available in the files of the Committee on Rules and Administration and Select Committee on Indian Affairs.

Set forth below is a copy of the legal opinion rendered by the Congressional Research Service of the Library of Congress addressing the concern that legislation requiring Native American membership on the Board of the Museum may establish an unconstitutional racial classification.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, May 15, 1989.

To: Senate Select Committee on Indian Affairs

From: American Law Division

Subject: Whether Specifying Native American Membership of a Board of the American Indian Museum Violates Equal Protection of the Laws

This responds to your request that we analyze a contention made before the Committee on Rules and Administration and the Select Committee on Indian Affairs, on May 12, 1989, that provisions of the American Indian Museum legislation that require that seven members of its Board of Trustees be of Native American ancestry may be unconstitutional in that "it may establish an unconstitutional racial classification." [1]

The Practice of Requiring Native American Membership on Such Boards is Not Unprecedented

While we have not examined the proposed legislation, which is apparently in draft form, we note that is is not unprecedented for Congress to require Indian membership for federally funded and staffed entity that has a board of trustees that is required by law to be predominantly Indian. Current law contains legislation establishing an "Institute of American Indian and Alaska Native Culture and Arts Development" that has a Board of Trustees composed of 13 voting and 6 nonvoting members, with the voting members appointed by the President with the advice and consent of the Senate from "among individuals from private life who are Indians, or other individuals, widely recognized in the filed of Indian art and culture and who represent diverse political views." [2] In making these appointments, moreover, the President is directed by this legislation to "consult with the Indian tribes and the various organizations of Indians; . . . solicit nominations from Indian tribes and various Indian organizations . . .; give due consideration to the appointment of individuals who will provide appropriate regional and tribal representation on the Board; and *ensure that a majority of the Board appointed under paragraph (1)(A)* [3] *are Indians.*[4] The functions of the Institute of American Indian and Alaska Native Culture and Arts Development, moreover, are similar to those that might be envisioned for an American Indian Museum. The Institute is to establish a Center for Culture and Art Studies, a Center for Research and Cultural Exchange, and to develop programs and centers to foster research and scholarship in Indian art and culture.[5] It is authorized to extend preference to Indians in admissions, employment, and grants and fellowships.[6] A similar program

---

[1] Statement of Robert McCormick Adams before the Committee on Rules and Administration and the Select Committee on Indian Affairs, United States Senate 6 (May 12, 1989).
[2] 20 U.S.C. § 4412(a)(1).
[3] The reference is to the provision for voting members.
[4] 20 U.S.C. § 4412(2) (emphasis added).
[5] 20 U.S.C. § 4417.
[6] 20 U.S.C. § 4418.

exists within the Department of Interior for making grants with respect to Native Hawaiian culture and arts development.[7] Any organization receiving a grant under this program must establish a governing board whose members must "be Native Hawaiians or individuals widely recognized in the Field of Native Hawaiian art and culture." [8]

Requiring Predominately Native American Membership on Such Boards Does Not Appear to Be Unconstitutional Racial Discrimination

The contention that a statutory requirement for Indian or Native American descent of a majority of the members of a Board of Trustees administering a museum established by the federal government or the federal government in cooperation with private donors is invidious racial discrimination seems to be in conflict with a line of federal court cases that permits the federal government considerable authority in matters involving Indians or other descendants of the aboriginal inhabitants of territory that has become the United States of America. This contention seems to ignore the long line of decisional precedent upholding federal legislation favoring Indians or Indian tribes as fully consistent with the Constitutionally mandated equal protection of the laws because of the special relationship between the United States government and the Indian tribes and other descendants of the aboriginal inhabitants of the land that has become the United States.

The inclusion of a requirement of a majority of Indians on the Museum's Board is analogous to the Indian preference laws that mandate preferential hiring of Indians in programs concerned with Indian affairs and date back to the early nineteenth century.[9] The Supreme Court has held that a federal law singling out Indians for preferential treatment is not invidious racial discrimination in violation of the Due Process Clause of the Fifth Amendment, *Morton v. Mancari*, 417 U.S. 535 (1977); it is a classification based on the political status of the tribes, recognized in the Constitution by the provisions permitting Congress to regulate commerce with them, Art. I, sec. 8, cl. 3, and the President, with the advice and consent of the Senate, to make treaties with them, Art. II, sec. 2, cl. 2.

On the question of whether Congress could enact a law that distinguished Indians without reference to tribal affiliation, there is no case squarely on point. *Morton v. Mancari*, however, seems to have presented the standard that the courts would apply. In that case, which involved whether the statutes authorizing preferential hiring of Indians by the Bureau of Indian Affairs violated the equal protection requirements of the Fifth Amendment, the Court reviewed the history of Congressional enactments for the benefit of

---

[7] 20 U.S.C. § 4441–4442.

[8] 20 U.S.C. § 4441(c)(2)(A).

[9] Act of June 30, 1834, Ch. 162, 4 Stat. 735, 737. This required of the newly formed Department of Indian Affairs, "[i]n all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties. And where any of the tribes are, in the opinion of the Secretary of War [charged with superintending the Department of Indian Affairs], competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe."

Indians and the policy that Congress had established fostering Indian tribal government and concluded that the statutes were constitutional. In upholding the preference statutes, the Court set out the standard by which it would judge statutes affording special treatment to Indians:

> On numerous occasions this Court specifically has upheld legislation that singles out Indians for particular and special treatment . . . . *As long as the special treatment can be tied rationally to Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed.* Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process.[10]

A subsequent case, *Delaware Tribal Business Comm. v. Weeks,*[11] seems to indicate that, if Congress operates within the framework of the standard set by *Morton v. Mancari,* the courts will be reluctant to interpose their judgment for that of Congress where Indian affairs legislation is in question. In that case the Supreme Court upheld a statute that distributed an award under the Indian Claims Commission Act to the two branches of descendants of the original Delaware Nation that had represented it in a claim before the Indian Claims Commission against the contention by a third branch of descendants that the equal protection of the laws guaranteed by the Fifth Amendment mandated its sharing in the award. In reaching its decision that Court, relying on *Morton v. Mancari,* stated that "[t]he standard of review . . . is that the legislative judgment should not be disturbed '[a]s long as the special treatment can be tied to the fulfillment of Congress' unique obligation toward Indians. . . .'"[12]

The nature of that obligation, as the Supreme Court has viewed it, has relevance to the inquiry at hand because the Court has seen the relationship between Congress, representing the federal government, and the Indian tribes, representing the Indian people, in terms of a trusteeship theory. The Court has described the trust obligation of the United States towards the tribes as springing from the history of federal-tribal relations:

> In the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people, needing protection against the selfishness of others and their own improvidence. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic . . . .[13]

---

[10] *Morton* v. *Mancari,* 417 U.S. 535, 554–555 (1974)(emphasis added).
[11] 417 U.S. 73 (1974).
[12] *Id.,* at 85, citing *Morton v. Mancari,* at 554–555.
[13] *Board of County Comm'rs v. Seber,* 318 U.S. 705, 715 (1943).

Although the Supreme Court has never directly addressed the question of whether what may be termed the "tied rationally" standard imposes a limitation on the power of Congress to implement its trust obligation toward Indains, there seems to be an inherent requirement that Congress, when legislating in this area, intend the betterment of the affected Indians.[14] That the legislation be directed toward tribal Indians or to tribes, however, does not seem to be requisite. All Indians are descendants of tribal members whether or not they currently belong to a tribe; the United States government's obligation extends from the historical relationship with the tribes at the time of the settling the continent.[15]

It might be said that much of the nineteenth century legislation enacted under the aegis of the sovereign authority of the federal government directly affected the viability and existence of tribes; thus, the fact that some Indians are not integrated into tribes may have been a direct result of federal treaties or statutes.[16] While it might be true today that the vast quantity of federal statutes dealing with Indians addresses itself to tribes, it is equally true that much of federal statutory law singling Indians out for special treatment deals with individual Indians, rather than tribal Indians. The Indian liquor laws, for example, have been written to apply to Indians under the "charge of any Indian superintendent or agent,"[17] "any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government," "any Indian ward of the Government under charge of any Indian superintendent or agent," or "any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship."[18] The Supreme Court has made various pronouncements relative to the extensive power of Congress with respect to Indians:

> . . . the tribal relation may be dissolved and the national guardianship brought to an end, but it rests with Congress to determine when and how this shall be done, and whether the emancipation shall at first be complete or only partial.[19]

The courts have upheld the long history of federal regulation of individual property of tribal Indians, and their descendants, without regard to whether the individuals holding the property maintain tribal relations.[20] The rational for treating Indians distinc-

---

[14] Se F. Cohen, *Handbook of Federal Indian Law* 221 (1982 ed.).

[15] There seems to be a parallel obligation with respect to Hawaiian Natives and Native Alaskans. The 1867 treaty with Russia effecting the cession of Alaska, Act of March 30, 1867, 15 *Stat.* 539, 542, contained a provision placing the natives of Alaska on the same footing as the Indians of the lower forty eight states: "[t]he uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country." Felix Cohen's *Handbook of Federal Indian Law* 739, n. 7, cites a list of federal cases recognizing the existence of the guardian-ward or trust relationship between the United States and Alaska Natives. On the other hand, it fully acknowledges that "the full extent of the trust obligation owed by the United States to Native Hawaiians and the manner of its fulfullment has not yet been defined." *Id.*, at 788.

[16] See F. Cohen, "Spanish Origin of Indian Rights," 31 *Georgetown Law Journal* 1 (1942); *Handbook of Federal Indian Law* 142 (1982 ed.).

[17] 27 *Stat.* 260, 262

[18] 29 *Stat.* 506.

[19] *United States v. Nice*, 242 U.S. 591, 599 (1916).

[20] See, e.g., *Tiger v. Western Investment Co.*, 221 U.S. 286 (1911).

tively is the historical political relationship between the United States and the Indian tribes. That remains regardless of tribal affiliation of individual Indians; that is to say, when the United States is singling out Indians for special treatment it is doing so because of an ancient political relationship, not because of a racial relationship. For this reason, it would seem that the courts would apply the *Morton v. Mancari* standard in the context of legislation mandating an Indian majority on the Board of Trustees of an American Indian Museum.

That would mean that the questions that the courts would raise with respect to legislation requiring an Indian majority of the Board of *Trustees* of an American Indian Museum, funded by tax dollars and private donations and fulfilling public functions would likely be those derived from *Morton v. Mancari:*

Is this legislation enacted pursuance of Congressional power in Indian affairs?

Is there a rational basis for the majority requirement?

Is the requirement one that is intended to benefit Indians?

Provided the legislative history provides sufficent legislative findings supporting affirmative conclusions with respect to each of these questions, it would appear likely that on the basis of *Morton v. Mancari,* the courts would defer to the legislative judgment.

We hope this information is helpful to you and that you will call upon our office should you need further assistance.

M. MAUREEN MURPHY,
Legislative Attorney.

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, NY, March 15, 1989.

ROBERT MCCORMICK ADAMS,
Secretary, The Smithsonian Institution,
Washington, DC.

DEAR MR. SECRETARY: I refer to the Memorandum of Understanding to be entered into between the Smithsonian Institution and the Museum of the American Indian, Heye Foundation and to the option paper for the New York element of the National Museum of the American Indian.

In order to help establish a Museum facility of approximately 82,500 square feet, including space shared with the General Services Administration, at the Custom House as provided in the Memorandum of Understanding, the City of New York hereby agrees (i) to fund the design, construction and renovation of the space in the Custom House to be used by the Museum as outlined in the option paper, to the extent of the lesser of eight million dollars ($8,000,000) or an amount equal to one third (⅓) of the cost of such design, construction and renovation and (ii) to treat any and all applications by the Institution for grants to support programs to be conducted by the museum in New York and/or for contracts for services, as though they had been made by a local cultural institution.

The City shall make monies available to the Institution for the purposes set forth above at the same times and subject to the cap

described above, in the same amounts as the Federal government shall make funds available to the Institution for said purposes.

You may show this letter to members of Congress in connection with your efforts to obtain Federal support for the project and may advise the persons to whom you show it that they may rely upon these undertakings.

The cultural resources of the City already have been enhanced by the Smithsonian's presence in its Cooper-Hewitt Museum and the Archives of American Art. We look forward to extending this relationship and to welcoming you also to Bowling Green.

All the best.

Sincerely,

EDWARD I. KOCH, *Mayor.*

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
Albany, NY, March 9, 1989.

Mr. ROBERT MCCORMICK ADAMS,
Secretary, Smithsonian Institute,
Washington, DC.

DEAR MR. SECRETARY: I refer to the Memorandum of Understanding to be entered into between the Smithsonian Institution and the Museum of the American Indian, Hoye Foundation and to the option paper for the New York element of the National Museum of the American Indian.

In order to help establish a museum facility at the Customs House in New York City as provided in the Memorandum of Understanding, I agree (i) to propose appropriations in the 1990–91 Executive Budget to fund the design, construction and renovation of the space in the Custom House to be used by the museum as outlined in the option paper, to the extent of the lesser of $8 million or an amount equal to one-third of the cost of such design, construction and renovation, with the understanding that all three sources of funding for the project will be assessed in equal amounts as the project is completed, and (ii) to treat applications by the Institution to the New York State Council on the Arts and/or to other appropriate State agencies for support for programs to be conducted by the Museum in New York as though they had been made by a local cultural institution except grants for general operating support for the museum.

You may show this letter to members of Congress in connection with your efforts to obtain federal support for the project and may advise the persons to whom you show it that they may rely upon these undertakings.

Sincerely,

MARIO M. CUOMO.

LEGISLATIVE HISTORY

Legislation to establish the National Museum of the American Indian within the Smithsonian Institution was introduced on May 11, 1989 by Senator Inouye, for himself and Senators Ford, Kassebaum, Domenici, Packwood, Baucus, Burdick, Daschle, Cochran, McCain, Gorton, Rudman, Kennedy, Adams, Conrad, D'Amato, Hatfield, Burns, Bradley, Riegle, Simon, Pressler, DeConcini, Mur-

kowski, Sanford, Dodd, Wirth, Matsunaga, Reid, Bingaman, Kerrey, Stevens, Kohl, Metzenbaum, Moynihan, Dole, Pell, Kerry, Levin, Harkin, Boren and Biden and was jointly referred to the Select Committee on Indian Affairs and the Committee on Rules and Administration. A joint hearing of the Select Committee on Indian Affairs and the Committee on Rules and Administration on S. 978 was held on May 12, 1989. An amendment in the nature of a substitute to S. 978 incorporating the amendments referenced above was considered and ordered reported by the Select Committee on Indian Affairs on May 16, 1989. The same amendment in the nature of a substitute to S. 978 was considered and ordered reported by the Committee on Rules and Administration on May 17, 1989.

COST CONSIDERATIONS

Although Smithsonian Secretary Adams testified that the estimated costs associated with the construction of the National Museum on the mall are approximately $175 million, estimates of the costs associated with the construction of the National Museum on the national mall, and costs associated with the operation of a museum facility in the U.S. Custom House in New York are still being developed by the Smithsonian Institution. The City and State of New York have each committed to contributing $8 million towards the costs associated with construction and refurbishing of the Custom House for use as a museum facility. (Copies of letters from New York Governor Cuomo and New York City Mayor Koch making such commitments are set forth below.) A national and international private fund-raising effort which has already been initiated is expected to substantially offset the need for Federal appropriations, but specific percentages are not identifiable at this time.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on May 16, 1989, by unanimous vote and with a quorum present, recommends that the Seante pass S. 978.

In compliance with paragraph 7 (b) and (c) of Rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote in the Committee on Rules and Administration during its consideration of the substitute amendment, to report it favorably, was:

YEAS—11	NAYS—0
Mr. Inouye	
Mr. DeConcini	
Mr. Dodd	
Mr. Adams	
Mr. Stevens	
Mr. Hatfield	
Mr. McClure	
Mr. Helms	
Mr. Garn	
Mr. McConnell	
Mr. Ford	

The Chairman presented the proxies of Mr. Moynihan and Mr. Gore in favor of the bill.

SECTION-BUY-SECTION ANALYSIS

Section 1. Section 1 provides that the Act may be cited as the National American Indian Museum Act.

Section 2. Section 2 contains the findings of Congress that there is no national museum devoted exclusively to the hisotry and art of cultures indigenous to the Americas, specifically Indians, Eskimos, and Aleuts; that although the Smithsonian Institution employs more than 6,000 people, operates 19 museums, galleries and major research facilities, and sponsors extensive American Indian programs, none of its institutions are devoted specifically to Native American art and history; that the Museum of the American Indian, Heye Foundation of New York, has an unequaled assemblage of more than 1,000,000 Indian art objects and artifacts and is one of the largest of such collections in the world; that the library of the Museum of the American Indian, Heye Foundation, houses 40,000 volumes relating to archaeology, ethnology, and history of Native American peoples; that the collection of the Museum of the American Indian, Heye Foundation, of art, artifacts, specimens and books is inadequately housed in 3 separate facilities totaling 90,000 square feet, with 95 percent of the collection of art and artifacts stored in 20,000 square feet and the collection of books kept in a 15,000 square foot library; that the collection of the Museum of the American Indian, Heye Foundation needs a minimum of 400,000 square feet to adequately exhibit and store art and artifacts and to provide space for scholars and researchers; that the bringing together of the collection of the Museum of the American Indian, Heye Foundation, and the Native American collection of the Smithsonian Institution would create an institution whose capabilities for exhibition and research would be unrivaled in scope and would give all Americans the opportunity to learn of the cultural legacy and historic grandeur and contemporary culture of the American Indian people; and provide a meeting place for scholars, a significant, national facility for the exhibition of Indian art and artifacts, a stage for the performing arts, curation and other learning opportunities for American Indian people, and traveling exhibitions to communities throughout the Nation; that approximately 300 human skeletal remains of Indians were collected from battlefields and burial grounds and sent to the Army Medical Museum by order of the Surgeon General of the United States Army and were later transferred to the Smithsonian Institution where they are still stored; that the Smithsonian Institution has acquired additional collections of Native American skeletal remains through archaeological excavations, and donations from private individuals and museums; that these collections have been estimated to contain the remains of approximately 18,000 Indians, Eskimos, and Aleuts and the existence of these collections has concerned many Indian tribes and bands and Alaska Native villages which are determined to provide an appropriate resting place for their ancestors; that identifying the geographic and tribal origins of indian and Alaska Native skeletal remains in the Smithsonian collections is essential to addressing these concerns; and that an extraordinary site on the National Mall in the District of Columbia (U.S. Government Reservation No. 6) which has been reserved for the use of the

Smithsonian Institution is available for construction of a suitable building to permanently house the collection of the National Museum of the American Indian.

Section 3. Section 3 sets forth the definitions of terms for the purposes of this Act.

Section 3(1). Section 3(1) provides that the term "Indian" means a person who is a member of an Indian tribe, including any individual who is an Alaska Native.

Section 3(2). Section 3(2) provides that the term "Alaska Native" means any Eskimo, Aleut, or Alaska Indian.

Section 3(3). Section 3(3) provides that the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village as defined in, or established pursuant to the Alaska Native Claims Settlement Act.

Section 3(4). Section 3(4) provides that the term "Native American" means an Indian or a Native Hawaiian.

Section 3(5). Section 3(5) provides that the term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

Section 3(6). Section 3(6) provides that the term "Museum" means the National Museum of the American Indian established under section 4 of this Act.

Section 3(7). Section 3(7) provides that the term "Heye Museum" means the Museum of the American Indian, Heye Foundation.

Section 3(8). Section 3(8) provides that the term "Board of Trustees" means the Board of Trustees of the National Museum of the American Indian.

Section 3(9). Section 3(9) provides that the term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

ESTABLISHMENT OF THE MUSEUM

Section 4(a). Section 4(a) provides authority for and directs that within the Smithsonian Institution, there is to be established a living memorial to American Indian people and their traditions which is to be known as the National Museum of the American Indian.

Section 4(a)(1). Section 4(a)(1) provides that the National Museum of the American Indian shall provide for the advancement of the study of the Native peoples of the Americas and the study of their language, literature, history, art, anthropology, and life.

Section 4(a)(2). Section 4(a)(2) provides that the National Museum of the American Indian shall provide for the collection, preservation, and exhibition of Indian objects of artistic, historic, literary, anthropological and scientific interest related to the advancement of the study of the Native peoples of the Americas and the study of their language, literature, history, art, and life.

Section 4(a)(3). Section 4(a)(3) provides that the National Museum of the American Indian shall provide for programs of research and study related to the advancement of the study of the Native peoples of the Americas and the study of their language, literature, history, art, and life.

Section 4(a)(4). Section 4(a)(4) provides that the National Museum of the American Indian shall provide means for carrying out the work described in Sections 4(a)(1), 4(a)(2), and 4(a)(3) in the District of Columbia, the State of New York, and such other locations as may be appropriate.

Section 4(b)(1). Section 4(b)(1) provides that the area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive in the District of Columbia is appropriated to the Smithsonian Institution as the permanent site of the National Museum of the American Indian. The section further provides that a facility for the National Museum of the American Indian is to be constructed on this site.

Section 4(b)(2). Section 4(b)(2) provides that a significant facility for the National Museum of the American Indian consisting of approximately 82,500 square feet, including auditorium and loading dock space shared with the General Services Administration, shall be established in the Old United States Custom House at One Bowling Green, New York, New York, and shall be designated "The George Gustav Heye Center of the National Museum of the American Indian".

Section 4(b)(3). Section 4(b)(3) authorizes a facility for the conservation and storage of the collections of the National Museum of the American Indian to be established at the Museum Support Center of the Smithsonian Institution.

Section 4(c). Section 4(c) provides authority for the Board of Regents of the Smithsonian Institution to undertake the activities enumerated in sections 4(c)(1) through 4(c)(5) of this Act.

Section 4(c)(1). Section 4(c)(1) provides authority for the Board of Regents to enter into a conveyance agreement with the Museum of the American Indian, Heye Foundation which includes the provisions described in Sections 4(c)(1)(A) through 4(c)(1)(C) of this Act.

Section 4(c)(1)(A). Section 4(c)(1)(A) provides authority for the Board of Regents to enter into a conveyance agreement with the Museum of the American Indian, Heye Foundation for the transfer of title to those assets of the Museum of the American Indian, Heye Foundation described in the Memorandum of Understanding between the Smithsonian Institution and the Museum of the American Indian, Heye Foundation dated May 8, 1989, to the Smithsonian Institution for the benefit and use of the National Museum of the American Indian.

Section 4(c)(1)(B). Section 4(c)(1)(B) provides authority for the Board of Regents to enter into a conveyance agreement with the Museum of the American Indian, Heye Foundation to require that such assets be used for purposes consistent with the trust indenture established by George Gustav Heye on May 10, 1916.

Section 4(c)(1)(C). Section 4(c)(1)(C) provides authority for the Board of Regents to enter into a conveyance agreement with the Museum of the American Indian, Heye Foundation to be governed by, and construed in accordance with, the laws of the State of New York to the extent permitted under the laws of the United States and the Constitution of the United States and under the jurisdiction of the United States District Court for the Southern District of New York.

Section 4(c)(2). Section 4(c)(2) authorizes the Smithsonian Institution's Board of Regents to plan, design, and construct, or to acquire, facilities specified in subsection (b), which shall together aggregate at least 400,000 square feet.

Section 4(c)(3). Section 4(c)(3) authorizes the Smithsonian Institution's Board of Regents to provide for the permanent acquisition of Native American objects and artifacts from the Museum of the American Indian, Heye Foundation.

Section 4(c)(4). Section 4(c)(4) authorizes the Smithsonian Institution's Board of Regents to purchase, accept, borrow, or otherwise provide for the permanent acquisition of Native American objects and artifacts from other museums or private collections.

Section 4(c)(5). Section 4(c)(5) authorizes the Smithsonian Institution's Board of Regents to preserve, maintain, restore, loan, or exchange objects and artifacts in the collection of the National Museum of the American Indian.

Section 5(a). Section 5(a) provides authority for the establishment of a Board of Trustees within the Smithsonian Institution to be known as the Trustees of the National Museum of the American Indian.

Section 5(b). Section 5(b) estasblished certain enumerated authorities and responsibilities of the Board of Trustees of the National Museum of the American Indian.

Section 5(b)(1). Section 5(b)(1) directs the Board of Trustees of the National Museum of the American Indian to recommend annual operating budgets for the National Museum of the American Indian.

Section 5(b)(2). Section 5(b)(2) directs the Board of Trustees of the National Museum of the American Indian to provide advice and assistance to the Smithsonian Institution's Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the National Museum of the American Indian.

Section 5(b)(3). Section 5(b)(3) establishes the sole authority of the Board of Trustees of the National Museum of the American Indian to undertake the activities enumerated in Sections 5(b)(3)(A) through (C) subject to the general policy established by the Smithsonian Institution's Board of Regents.

Section 5(b)(3)(A). Section 5(b)(3)(A) establishes the sole authority of the Board of Trustees of the National Museum of the American Indian, subject to the general policy established by the Smithsonian Institution's Board of Regents, to loan, exchange, sell, or otherwise dispose of any part of the collections of the National Museum of the American Indian, but only if the funds generated by such disposition are used for additions to the collections of the National Museum of the American Indian or for additions to the endowment of the National Museum of the American Indian.

Section 5(b)(3)(B). Section 5(b)(3)(B) establishes the sole authority of the Board of Trustees of the National Museum of the American Indian, subject to the general policy established by the Smithsonian Institution's Board of Regents, to purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the collections of the National Museum of the American Indian subject to the availability of funds and the provisions of annual budgets of the National Museum of the American Indian.

Section 5(b)(3)(C). Section 5(b)(3)(C) establishes the sole authority of the Board of Trustees of the National Museum of the American Indian, subject to the general policy established by the Smithsonian Institution's Board of Regents, to establish policy with respect to the utilization of the collections of the National Museum of the American Indian.

Section 5(b)(4). Section 5(b)(4) establishes the authority of the Board of Trustees of the National Museum of the American Indian to undertake the activities enumerated in sections 5(b)(4)(A) through (H) subject to the general policy established by the Smithsonian Institution's Board of Regents.

Section 5(b)(4)(A). Section 5(b)(4)(A) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to establish policy with respect to the restoration, preservation, and maintenance of the collections of the National Museum of the American Indian.

Section 5(b)(4)(B). Section 5(b)(4)(B) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to solicit funds for the National Museum of the American Indian and determine the purposes to which those funds shall be applied.

Section 5(b)(4)(C). Section 5(b)(4)(C) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to approve expenditures from the endowment of the National Museum of the American Indian, or of income generated from the endowment, for any purpose of the National Museum of the American Indian.

Section 5(b)(4)(D). Section 5(b)(4)(D) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to consult with and advise the Director of the National Museum of the American Indian on annual budgets to be recommended to the Smithsonian Institution's Board of Regents and otherwise consult with, advise, and support the Director of the National Museum of the American Indian in the operation of the National Museum of the American Indian.

Section 5(b)(4)(E). Section 5(b)(4)(E) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to provide for the exhibition of Native American objects and artifacts from the collections of the National Museum of the American Indian, and from the collections of the Museum of the American Indian, Heye Foundation, in regional facilities of the National Museum of the American Indian.

Section 5(b)(4)(F). Section 5(B)(4)(F) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to conduct programs of research and evaluation with respect to the collections of the National Museum of the American Indian.

Section 5(b)(4)(G). Section 5(b)(4)(G) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to conduct educational programs with respect to the collections of the National Museum of the American Indian.

Section 5(b)(4)(H). Section 5(b)(2)(H) establishes the authority of the Board of Trustees of the National Museum of the American Indian, subject to general policy established by the Smithsonian Institution's Board of Regents, to develop and implement policy as to the method of display of the Native American objects and artifacts in the collection of the National Museum of the American Indian.

Section 5(b)(5). Section 5(b)(5) directs the Board of Trustees of the National Museum of the American Indian to adopt bylaws to carry out its functions.

Section 5(b)(6). Section 5(b)(6) directs the Board of Trustees of the National Museum of the American Indian to designate a chairman from among its members and such other officers as may be provided for by the Board of Trustees.

Section 5(b)(7). Section 5(b)(7) directs the Board of Trustees of the National Museum of the American Indian to report annually to the Smithsonian Institution's Board of Regents on the acquisition, disposition, and display of Native American objects and artifacts, and on other matters within its discretion.

Section 5(b)(8). Section 5(b)(8) directs the Board of Trustees of the National Museum of the American Indian to submit an annual report to the Congress which is to include the proceedings of the Board of Trustees of the National Museum of the American Indian and a full account of the financial operations for the preceding fiscal year of the Board of Trustees of the National Museum of the American Indian.

Section 5(c)(1)(A). Section 5(c)(1)(A) provides authority for appointments to the initial Board of Trustees of the National Museum of the American Indian.

Section 5(c)(1)(A)(i). Section 5(c)(1)(A)(i) provides that the Secretary of the Smithsonian Institution shall be appointed to the initial Board of Trustees of the National Museum of the American Indian.

Section 5(c)(1)(A)(ii). Section 5(c)(1)(A)(ii) provides that an Assistant Secretary of the Smithsonian Institution designated by the Smithsonian Institution's Board of Regents shall be appointed to the initial Board of Trustees of the National Museum of the American Indian.

Section 5(c)(1)(A)(iii). Section 5(c)(1)(A)(iii) provides that of the individuals that are appointed to the initial Board of Trustees of the National Museum of the American Indian, 8 individuals shall be appointed by the Smithsonian Institution's Board of Regents.

Section 5(c)(1)(A)(iv). Section 5(c)(1)(A)(iv) provides that of the individuals appointed to the initial Board of Trustees of the National Museum of the American Indian, 15 individuals shall be appointed by the Smithsonian Institution's Board of Regents from a list submitted by the Board of Trustees of the Museum of the American Indian, Heye Foundation of candidates who are members of the Board of Trustees of the Museum of the American Indian, Heye Foundation.

Section 5(c)(1)(B). Section 5(c)(1)(B) provides that at least seven of the members of the Board of Trustees of the National Museum appointed by the Smithsonian Institution's Board of Regents are to be of Native American ancestry.

Section 5(c)(1)(C). Section 5(c)(1)(C) provides that any vacancy on the Board of Trustees of the National Museum of the American Indian that is caused by the failure of a member appointed from among the individuals appointed under Section 5(c)(1)(A)(iv) shall be filled by any individual appointed by the Smithsonian Institution's Board of Regents notwithstanding Section 5(c)(1)(A)(iv) but subject to the requirements of Section 5(c)(1)(B).

Section 5(c)(1)(D). Section 5(c)(1)(D) provides that the term of office of each of the members of the initial Board of Trustees appointed under Section 5(c)(1)(A)(iii) and (iv) shall be three years.

Section 5(c)(2)(A). Section 5(c)(2)(A) provides authority for appointments to the Board of Trustees of the National Museum of the American Indian upon expiration of the terms of office of the members of the initial Board of Trustees of the National Museum of the American Indian appointed under Section 5(c)(1)(A)(iii) and (iv).

Section 5(c)(2)(A)(i). Section 5(c)(2)(A)(i) provides that the Secretary of the Smithsonian Institution shall be appointed to the Board of Trustees of the National Museum of the American Indian upon the expiration of the terms of office of the members of the initial Board of Trustees appointed under section 5(c)(1)(A)(iii) and section 5(c)(1)(A)(iv).

Section 5(c)(2)(A)(ii). Sections 5(c)(2)(A)(ii) provides that an Assistant Secretary of the Smithsonian Institution designated by the Smithsonian Institution's Board of Regents shall be appointed to the Board of Trustees of the National Museum of the American Indian upon the expiration of the terms of office of the members of the initial Board of Trustees appointed under section 5(c)(1)(A)(iii) and section 5(c)(1)(A)(iv).

Section 5(c)(2)(A)(iii). Section 5(c)(2)(A)(iii) provide that 23 individuals appointed by the Smithsonian Institution's Board of Regents, shall be appointed from a list of nominees submitted by the Board of Trustees of the National Museum of the American Indian upon the expiration of the terms of office of the members of the initial Board of Trustees appointed under section 5(c)(1)(A)(iii) and section 5(c)(1)(A)(iv).

Section 5(c)(2)(B). Section 5(c)(2)(B) provides that at least twelve of the members of the Board of Trustees of the National Museum appointed under Section 5(c)(2)(A)(iii) are to be of Native American ancestry.

Section 5(c)(2)(C)(i). Section 5(c)(2)(C)(i) provides that except as otherwise provided in Section 5(c)(2)(C), the term of each member of the Board of Trustees of the National Museum of the American Indian shall be three years.

Section 5(c)(2)(C)(ii). Section 5(c)(2)(C)(ii) provides that of the initial members of the Board of Trustees of the National Museum of the American Indian appointed under Section 5(c)(2)(A)(iii), who succeed the members appointed under Section 5(c)(1)(A)(iii) and (iv), seven members shall have a term of office of one year; eight members shall have a term of office of two years; and eight members shall have a term of office of three years. The section further pro-

vides that the Board of Regents of the Smithsonian Institution shall designate the term of office of each of these members at the time the member is appointed.

Section 5(c)(3). Section 5(c)(3) provides that any member of the Board of Trustees of the National Museum of the American Indian appointed to fill a vacancy occurring prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of such term.

Section 5(d). Section 5(d) provides that a majority of the members of the Board of Trustees of the National Museum of the American Indian shall constitute a quorum and any vacancy on the Board of Trustees shall not affect the power of the Board of Trustees to function.

Section 5(e). Section 5(e) provides that members of the Board of Trustees of the National Museum of the American Indian may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

DIRECTOR; STAFF

Section 6(a). Section 6(a) provides authority for the Secretary of the Smithsonian Institution to appoint and fix the compensation and duties of the Director of the National Museum of the American Indian and of any such officers and employees of the National Museum of the American Indian as may be necessary for the efficient administration, operation, maintenance and preservation of the National Museum of the American Indian.

Section 6(b). Section 6(b) provides authority for the Director of the National Museum of the American Indian and two other employees of the National Museum of the American Indian may be appointed and compensated without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, and chapter 51 and subchapter III of title 5 of the United States Code.

Section 6(c). Section 6(c) provides that all employees of the Museum of the American Indian, Heye Foundation, serving at the time of the transfer of its collections, endowment, and other property to the Smithsonian Institution shall be offered employment by the Smithsonian Institution under the usual terms of employment of the Smithsonian Institution and may be appointed without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, and chapter 51 and subchapter III of title 5 of the United States Code.

FACILITY IN NEW YORK

Section 7(a). Section 7(a) provides that notwithstanding any provision of law other than the provisions of this Act, the Administrator of the General Services Administration is authorized, upon such terms and for such periods as may be mutually agreed upon by the Administrator of the General Services Administration and the Secretary of the Smithsonian Institution, to furnish at a nominal charge to the Smithsonian Institution, for a period of not less than 99 years, space in the Oid United States Custom House at One Bowling Green, New York, New York, as provided for under

section 4(b)(2) of this Act. The Smithsonian Institution shall reimburse the Administrator of the General Services Administration for the Smithsonian Institution's pro rata share of the cost of utilities, maintenance, cleaning, and other services and the full costs of any repairs or alterations requested by the Smithsonian Institution with respect to such space.

Section 7(b). Section 7(b) provides that the City of New York and the State of New York shall each contribute one-third of the total cost, not to exceed $24,000,000, for the design, construction and renovation of the space in the Old United States Custom House at One Bowling Green, New York, New York, that is to be used by the National Museum of the American Indian for the facility that is required to be established under section 4(b)(2).

Section 7(c). Section 7(c) provides that notwithstanding any other provision of the Act or any other law, the Board of Regents is authorized to charge the public a fee for admission to the facility of the National Museum of the American Indian that is required to be established under section 4(b)(2).

RELATIONSHIPS WITH OTHER MUSEUMS

Section 8. Section 8 provides authority for the Board of Regents, in consultation and cooperation with the Board of Trustees, to enter into agreements with museums, educational institutions, and cultural organizations to loan Native American artifacts and objects from the collection of the National Museum of the American Indian, to sponsor and coordinate a variety of traveling exhibitions, and to provide training and technical assistance.

STUDY ON DISPOSITION OF SKELETAL REMAINS

Section 9. Section 9 directs the Board of Regents to: (1) identify to the fullest extent possible, the geographic and tribal origins of the skeletal remains of Indians and Alaska Natives in the collections of the Smithsonian Institution; (2) to conduct a study and make recommendations as to the final disposition of the skeletal reamins of Native Americans that are in the possession of the Smithsonian Institution; (3) consult with Native American traditional religious leaders in making recommendations as to the final disposition of such skeletal remains; and (4) to report to the Congress by no later than the date that is three years after the date of enactment of the Act on the identity of such skeletal remains, and the findings and recommendations of the study.

PLEDGE

Section 10. Section 10 provides that the faith of the United States is pledged that the United States shall provide such funds as may be necessary for the design, construction, administration, maintenance, operation and the administrative expenses and costs of operating the National Museum of the American Indian, including the protection and care of collections acquired by the Board of Trustees of the National Museum of the American Indian or the Smithsonian Institution's Board of Regents, so that the National Museum of the American Indian shall at all times be properly maintained and

collections contained therein shall be exhibited regularly to the general public free of charge.

TRANSFER OF FUNDS

Section 11. Section 11 provides that any funds appropriated to carry out the provisions of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other actions, to the extent of the funds so transferred, as may be necessary to carry out the provisions of this Act.

AUTHORIZATION OF APPROPRIATIONS

Section 12(a). Section 12(a) authorizes appropriations to the Smithsonian Institution in the amount of $16,000,000 for fiscal year 1990, and such sums as may be necessary for each of the succeeding fiscal years to carry out the provisions of the Act.

Section 12(b). Section 12(b) provides that funds appropriated under the authority of Section 12(a) for any period prior to the availability of the facilities described in Section 4(b) shall remain available without fiscal year limitation for administrative and planning expenses and for the care and custody of the collections of the National Museum of the American Indian and the Museum of the American Indian, Heye Foundation.

Section 12(c). Section 12(c) provides that notwithstanding any other provision of the Act, no funds may be appropriated for the purpose of constructing the museum facilities authorized by the Act until the Smithsonian Institution provides to the Congress and the Administration, an analysis of the total estimated cost of such construction and a cost-sharing plan projecting amounts for Federal appropriations and for non-Federal contributions.

COST AND BUDGETARY CONSIDERATIONS

The cost estimates for S. 978 as provided by the Congressional Budget Office are outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 9, 1989.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 978, the National American Indian Museum Act, as ordered reported by the Senate Select Committee on Indian Affairs on May 16, 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 978.
2. Bill title: National American Indian Museum Act.

3. Bill status: As ordered reported from the Senate Select Committee on Indian Affairs on May 16, 1989.

4. Bill purpose: The purpose of this bill is to establish within the Smithsonian Institution a museum to be known as the National Museum of the American Indian. The Museum, which is to consist of three facilities, would permanently house the collection of the Heye Foundation's Museum of the American Indian currently located in New York City. One facility, to be built on the National Mall in the District of Columbia, would display a portion of the collection. A second facility, the Old United States Custom House in New York City, has been chosen as the site for the exhibition of the remainder of the collection. The third facility authorized by the bill would be located at the Smithsonian's Museum Support Center in Suitland, Md. It would serve to store and conserve the collections of the Museum. According to the legislation, the size of the three facilities combined must total at least 400 thousand square feet. This bill requires subsequent appropriations action.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Start Up:					
One time costs:					
Authorization level	11				
Estimated outlays	11				
Ongoing costs:					
Authorization level	5	5	5	5	6
Estimated outlays	4	5	5	5	6
Start up subtotal:					
Authorization level	16	5	5	5	6
Estimated outlays	15	5	5	5	6
Mall Museum; Planning, design, and construction:					
Estimated authorization level		84			
Estimated outlays		21	41	14	8
Mall Museum: Operation:					
Estimated authorization level					9
Estimated outlays					8
U.S. Custom House: Renovation:					
Estimated authorization level		8			
Estimated outlays		(1)	1	3	3
U.S. Custom House: Operation:					
Estimated authorization level					6
Estimated outlays					5
U.S. Custom House: User fee collection:					
Estimated authorization level					−3
Estimated outlays					−3
Museum Support Center Facility: Planning, design, and construction:					
Estimated authorization level		9			
Estimated outlays		2	5	2	1
Museum Support Center Facility: Operation:					
Estimated authorization level					1
Estimated outlays					1
Bill total:					
Estimated authorization level	16	106	5	5	19
Estimated outlays	15	29	52	24	29

[1] Less than $500,000.

Details in table may not add to totals due to rounding.

The costs of this bill fall within Function 500.

Basis of Estimate: S. 978, the National American Indian Museum Act, would authorize the Smithsonian Institution to construct on the National Mall a museum to house a portion of the collection of the Heye Foundation's Museum of the American Indian currently located in New York City. The Mall museum is to be one of three facilities collectively known as the National Museum of the American Indian. A second facility, to be located in New York City at the Old United States Custom House, would allow part of the Heye Foundation collection to remain in New York. A third facility for the conservation and storage of the Museum's collections would be established at the Smithsonian's Museum Support Center in Suitland, Maryland. According to the bill, the Custom House facility must be roughly 82,500 square feet while the three facilities together must total at least 400 thousand square feet.

The authorization level for FY 1990 is specified at $16 million while such sums as may be necessary are authorized for the succeeding fiscal years. The funds authorized for FY 1990 would basically cover the "start up" costs of the project. Based on a cost analysis conducted by the Smithsonian, roughly $11 million of the "start up" funds would represent one time costs for such expenses as overall project planning, coordination, and administration; initial construction planning and design; and a study identifying the geographic and tribal origins of the skeletal remains of American Indians and Alaska Natives in existing Smithsonian collections. The bill requires that this study be completed within 3 years after the date of enactment. According to the Smithsonian estimate, the remaining $5 million would cover such ongoing costs as maintenance and security for the care and custody of the collection, salaries and benefits for current Heye Foundation staff whose employment will be transferred to the Smithsonian, and expenses for the Museum's Board of Trustees. The estimated authorization levels for the ongoing "start up" costs of the project are the estimated $5 million in FY 1990 adjusted for projected inflation. All authorization levels are assumed to be fully appropriated at the beginning of each fiscal year. Virtually all of the one time costs ($11 million) would be spent in FY 1990. Outlays for the ongoing costs, however, reflect the current spending pattern of other similar programs within the Smithsonian Institution.

S. 978 authorizes the building of a museum consisting of three facilities totaling at least 400 thousand square feet of space. Whether construction will take place of three modest facilities totalling exactly 400 thousand square feet, three elaborate, state-of-the-art facilities whose combined total space is much greater than 400 thousand square feet, or something in between is unknown.

In conducting this estimate, we have assumed that the three facilities would open in FY 1994 and that their aggregate space would total 400 thousand square feet. Because the New York City Custom House facility is required to be approximately 82,500 square feet, the Mall museum and the storage facility combined would total 317,500 square feet. According to the Smithsonian, the storage facility in Suitland, Md. would consist of a "pod" and associated laboratory space. The "pod" is basically a three story building where museum collections are stored while the lab space is

used for curatorial purposes. An existing "pod" and lab space at the Suitland, Md. site together currently cover about 77 thousand square feet. In this estimate, we have assumed that a "pod" and associated lab space similar to those in existence would be built for the Heye Foundation collection. Assuming that the storage facility would be 77 thousand square feet, the size of the Mall facility would then be roughly 240 thousand square feet.

The FY 1991 estimated authorization level for the planning, design, and construction costs of the Mall facility is modeled after the planning, design, and construction costs of the Smithsonian's Hirshorn museum. The Hirshorn runs approximately 176 thousand square feet and cost roughly $15 million to build in 1968. Assuming that the Mall facility would be about 240 thousand square feet, its size would be roughly one-third larger than that of the Hirshorn's. As a result, the FY 1991 estimated authorization level of $84 million was derived by adjusting the 1968 cost figure for the Hirshorn for the size difference and for inflation. The FY 1994 estimated authorization level for the operating costs of the Mall facility was similarly derived. The FY 1989 operating costs for the Hirshorn were increased by one third and were adjusted for inflation. Outlays for the planning, design, and construction estimate reflect the spending patterns of similar construction projects currently funded by the federal government. The operating cost outlays reflect the current spending patterns of the operating costs of other similar programs within the Smithsonian Institution.

The United States Custom House in New York City is currently owned by the General Services Administration (GSA). According to the legislation, GSA would be authorized to furnish to the Smithsonian at a nominal charge, 82,500 square feet of space in the Custom House facility for the purpose of establishing an exhibit displaying a portion of the Heye Foundation collection. The Smithsonian would then be authorized to renovate the existing space provided that the total renovation cost does not exceed $24 million. In addition, the Smithsonian would assume full responsibility for its share of the building operating costs. Based on discussions with GSA, we understand that the "nominal charge" is basically a formality and would result in an insignificant cost to the federal government. As for the renovation costs, the bill stipulates that the city of New York and the state of New York will each contribute one-third of the total cost up to $8 million. This estimate assumes that renovation costs will total the full $24 million and that the federal government will provide the remaining $8 million (It is possible, however, that the Smithsonian will be able to generate this money through fund raising efforts). Outlay estimates reflect the spending patterns of other similar activities conducted by the GSA.

As noted above, the Smithsonian would be required to pay its share of the building operating costs in addition to the program operating costs of the exhibit. Because GSA is currently operating the building, no additional cost to the federal government would be incurred if the Smithsonian were to move in. The Smithsonian, however, would incur some program operating costs associated with displaying the exhibit. The Smithsonian estimates that this cost would total $4.6 million if the exhibit were to open in FY 1989. This estimate, however, assumes that the exhibit would open in FY

1994. As a result, the FY 1994 estimated authorization level is the Smithsonian's FY 1989 estimate adjusted for inflation. Estimated outlays reflect the current spending patterns of the operating costs of other similar Smithsonian programs.

S. 978 authorizes the Smithsonian to charge the public a fee for admission to the Custom House exhibit. The Heye Foundation estimates that through proper promotion, the Custom House exhibit will draw 1 million visitors in FY 1992. It is not certain what the Smithsonian will charge for admission or that a fee will be charged at all. Based on a number of assumptions, though, and on information from the Heye Foundation, a rough estimate has been derived for admission fee collections. According to the Heye Foundation, a fee of $2.50 for students and senior citizens, $1.50 for student tours, and $5.00 for adults could be charged in FY 1992. No fee would be charged for American Indians visiting the Museum. Based on historical experience, 20 percent of the visitors would be either students or senior citizens, 40 percent would be student tours, and 30 percent would be adults. American Indians would comprise 10 percent of the total visitors.

Under these assumptions, the Smithsonian would collect roughly $2.6 million in admission fees in FY 1992. CBO estimates that this figure would not change for FY 1994.

The FY 1991 estimated authorization level for the planning, design, and construction of the Museum Support Center facility is based on the planning, design, and construction costs of the Smithsonian's existing storage facilities. Four storage "pods" and a laboratory facility currently exist at the Suitland, Md. site. Combined they span approximately 308 thousand square feet and cost roughly $29 million to build in FY 1982. It is estimated therefore that each "pod" and associated lab space covers about 77 thousand square feet and cost around $7 million to build in FY 1982. The $7 million figure represents the cost to build only the shell of the "pod." Since 1982, however, each "pod" has been converted into a three-story structure. The Smithsonian has no figures on the three-story renovation costs. The FY 1994 estimated authorization level for the Museum Support Center storage facility is a conservative estimate for it only accounts for the costs to build the shell of the "pod." The estimated level was derived by adjusting the $7 million FY 1982 figure for inflation. Estimated outlays reflect the current spending patterns of similar construction projects currently funded by the federal government. Estimates of the operating costs for the new "pod" and associated lab space are based on the current operating costs of the Support Center. FY 1989 operating costs for the four pods and lab facility total $4.4 million. It therefore costs approximately $1.1 million to operate one pod and its associated lab space in FY 1989. The FY 1994 estimated authorization level was derived by adjusting the $1.1 million FY 1989 figure for inflation. Estimated outlays reflect the current spending patterns of the operating costs of other similar Smithsonian programs.

6. Estimated cost to State and local government: S. 978 authorizes the Administrator of General Services to furnish at a nominal charge to the Smithsonian Institution, for a period of not less than 99 years, space in the Old United States Custom House in New York City. Due to its larger size, the Custom House has been

chosen as the site to display the portion of the Heye Foundation collection remaining in New York. According to the bill, the City of New York and the State of New York would each guarantee one-third or up to $8 million each for renovation costs as a result of the Smithsonian's occupancy of the Custom House facility.

7. Estimate comparison: The Smithsonian Institution has analyzed the cost impact to the federal government of S. 978, as ordered reported from the Senate Select Committee on Indian Affairs on May 16, 1989 in a testimony given by Robert McCormick Adams before the Senate Committee on Rules and Administration and the Senate Select Committee on Indian Affairs on May 12, 1989. According to the Smithsonian's estimate, planning, design, and construction costs of the museum facilities are likely to be around $175 million with annual operating costs of roughly $25 million. The analysis also states that the FY 1990 authorization level of $16 million would go towards construction planning and initial design costs of the facilities ($9 million); overall project planning, coordination, and administration, including establishment of the initial board of trustees ($1.2 million); maintenance and security for the care and custody of the collection ($3.5 million); and the transfer to the Smithsonian of current staff of the Museum of the American Indian, Heye Foundation ($1.3 million). The remaining $1 million authorized in the bill would be used for the identification of geographic and tribal origins of the skeletal remains of American Indians and Alaska Natives in existing Smithsonian collections. S. 978 would require that this study be completed within 3 years after the date of enactment.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Namian.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill.

The Committee believes that S. 978 will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The summary of the Administration's position has been provided, supra, in this report.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 978 will not effect any changes in existing law.

MEMORANDUM OF UNDERSTANDING

Set forth below in the memorandum of understanding between the Smithsonian Institution and the Museum of the American Indian, Heye Foundation.

MEMORANDUM OF UNDERSTANDING BETWEEN THE MUSEUM OF THE AMERICAN INDIAN, HEYE FOUNDATION AND THE SMITHSONIAN INSTITUTION

Whereas the Museum of the American Indian, Heye Foundation (hereinafter referred to as the "Heye Foundation") was established pursuant to a trust indenture executed in the State of New York in 1916, which indenture defined the Foundation's purposes substantially as follows:

(1) to collect, preserve, study, and exhibit all things connected with the anthropology of the indigenous people of North, South, and Central America, including objects of artistic, historic, literary, and scientific interest;

(2) to advance the study of anthropology, particularly in connection with that of the indigenous peoples of the Americas, and the study of their languages, literature, history, art, and life; and

(3) to promote public welfare by actively advancing learning and providing means for carrying on such work in the State of New York; and

Whereas the Heye Foundation has an unrivaled assemblage of American Indian objects from all portions of the Western Hemisphere that constitutes an unparalleled resource for research and education; and

Whereas the financial resources of the Heye Foundation are at present insufficient to carry out the purposes for which it was established or to care adequately for the collections with which it is entrusted; and

Whereas diligent and strenuous effort by the Trustees and the staff of the Heye Foundation has obtained no satisfactory site in the State of New York in which to house and display the collections of the Heye Foundation and otherwise to carry out the purposes for which it was created; and

Whereas the Smithsonian Institution (hereinafter referred to as the "Institution") is an establishment created for the increase and diffusion of knowledge and exists under and by virtue of an Act of the Congress of the United States of America, approved August 10, 1846; and

Whereas Public Law 94-74, approved August 8, 1975, reserved to the Institution a site near the base of Capitol Hill on the National Mall in Washington, D.C. for its future public uses; and

Whereas the Institution historically has engaged in and been committed to the advancement of the study of anthropology, particularly in connection with that of indigenous peoples of the Americas and the study of their languages, literature, history, art, and life; and

Whereas a national museum on prominent sites in the District of Columbia and the State of New York would provide an unique capability for the collection, research, preservation, study, and exhibition of all things connected with the anthropology of the indigenous peoples of North, South, and Central America, as well as expanded opportunities for American Indian people to work with the materials of their own culture,

Now therefore be it resolved that the Heye Foundation and the Institution understand and agree as follows:

First. Subject to the provisions and conditions hereinafter expressed, the Heye Foundation hereby agrees to transfer and deliver its entire collection of books, objects, and works of art as listed in the schedules attached hereto; its endowment; and all other property, excluding the exhibition facility at 3753 Broadway, New York, New York (herein called "Audubon Terrace") to the Institution; and the Institution hereby agrees to accept said property from the Heye Foundation for the following uses and purposes:

A. to collect, preserve, study, and exhibit all things connected with the anthropology of the indigenous people of North, South, and Central America, including objects of artistic, historic, literary, and scientific interest;

B. to advance the study of anthropology, particularly in connection with that of the indigenous peoples of the Americas, and the study of their languages, literature, history, art, and life;

C. to advance programs of research and study; and

D. to provide means for carrying on this work in the District of Columbia, the State of New York and elsewhere as may be appropriate.

Second. The transfer by the Heye Foundation and the obligation of the Institution to proceed as contemplated herein are conditioned on:

A. the Board of Trustees of the Heye Foundation receiving final approval from the courts of New York to carry out such transfer on terms and conditions which if different than those set forth herein shall have been agreed to in writing by the Institution and

B. the Congress of the United States adopting and the President of the United States approving legislation to the following effect:

(1) There is established within the Institution the National Museum of the American Indian (hereinafter referred to as the "Museum"), the nature, objects, and purposes of which shall be

(a) to collect, preserve, study, and exhibit all things connected with the anthropology of the indigenous people of North, South, and Central America, including objects of artistic, historic, literary, and scientific interest;

(b) to advance the study of anthropology, particularly in connection with that of the indigenous peoples of the Americas, and the study of their languages, literature, history, art, and life;

(c) to advance programs of research and study; and

(d) to provide means for carrying on this work in the District of Columbia, the State of New York, and elsewhere as may be appropriate.

(2) The area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive in the District of Columbia is appropriated to the Institution as the permanent site of a building for the Museum.

(3) A significant facility for the Museum consisting of approximately 82,500 square feet, including space shared with the General Services Administration shall be established in the Old United States Custom House at 1 Bowling Green in the City of New York. This facility shall be designated "The George Gustav Heye Center of the National Museum of the American Indian".

(4) A facility for the conservation and storage of the collections of the Museum shall be established at the Museum Support Center of the Institution.

(5) The Board of Regents of the Institution shall be duly authorized to prepare architectural and engineering designs, plans, and specifications and to construct or otherwise acquire the Museum facilities described in subparagraphs (2), (3) and (4) hereof together aggregating not less than 400,000 square feet.

(6) The faith of the United States is pledged that the United States shall provide such funds as may be necessary for the design, construction, administration, maintenance, operation, and preservation of the Museum facilities described in subparagraphs (2), (3) and (4) hereof and for the exhibition and preservation of the Museum collections.

(7) There shall be established within the Institution a board of trustees to be known as the Board of Trustees of the National Museum of the American Indian (hereinafter referred to as the "Board of Trustees") which shall recommend annual operating budgets and provide advice and assistance to the Board of Regents of the Institution on all matters relating to the administration, maintenance, operation, and preservation of the Museum. Subject to general policy established by the Board of Regents of the Institution, the Board of Trustees shall have sole authority to

(a) loan, exchange, sell, or otherwise dispose of any part of the Museum's collections, provided that funds generated by any disposition shall be used only for acquisitions for the Museum's collections or additions to the Museum's endowment;

(b) subject to availability of funds and provisions of annual budgets of the Museum, purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the Museum's collections; and

(c) establish policy with respect to the utilization of the Museum's collections;

and shall have authority to

(d) establish policy with respect to the restoration, preservation, and maintenance of the Museum's collections;

(e) raise funds for the Museum and determine the purposes to which those funds shall be applied;

(f) approve expenditures from the Museum's endowment or income generated therefrom for any purposes of the Museum; and

(g) consult with and advise the Director of the Museum on annual budgets to be recommended to the Board of Regents and otherwise consult with, advise, and support the Director in the operation of the Museum.

The Board of Trustees shall designate a chairman from among its members; adopt bylaws to carry out its functions; and report annually to the Board of Regents on matters within its discretion.

(8) The initial Board of Trustees shall be composed of twenty-five members as follows: (a) the Secretary of the Institution and an Assistant Secretary, who shall serve as ex officio members; (b) fifteen members of the Board of Trustees of the Heye Foundation; and (c) eight other members appointed by the Board of Regents. Those members serving under clauses (b) and (c) shall serve a three-year term. Successors to those members of the Board of Trustees serving under clauses (b) and (c) shall be appointed by the Board of Regents from a slate nominated by the Board of Trustees which shall include in its nominations American Indians and Alaska Natives and scholars in the fields of American Indian history and culture. Following the expiration of the terms of members serving under clauses (b) and (c) the terms of successor members of the Board of Trustees shall be designated by the Board of Regents at the time of appointment on nomination by the Board of Trustees and shall expire one-third at the end of one year, one-third at the end of two years, and one-third at the end of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. A majority of the members of the Board of Trustees shall constitute a quorum, and any vacancy shall not affect its power to function. Members of the Board of Trustees may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(9) All of the employees of the Heye Foundation at the time of the transfer of its collections, endowment and other property to the Institution shall be offered employment by the Institution under its usual terms of employment and may be appointed without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service, and Chapter 51 and subchapter III of Chapter 53 of title 5 of the United States Code. The Secretary of the Institution may appoint and fix the compensation and duties of the Director of the Museum and of such other officers and employees as may be necessary for the efficient administration, maintenance, operation, and preservation of the Museum. The Director and two other employees may be appointed and compensated without regard to the provisions of title 5 of the United States Code governing appointments in the com-

petitive service, and Chapter 51 and subchapter III of Chapter 53 of title 5 of the United States Code.

(10) There is authorized to be appropriated to the Institution such sums as may be necessary to carry out the purposes of this legislation, including without limitation during the period prior to the availability of the new facilities, funds for initial administrative and planning expenses, for the care and custody of the collection, and to permit the orderly progress of the work.

Third. The obligation of the Institution to proceed as provided herein is further conditioned on:

A. Receipt by the Institution of a letter from the Attorney General of the State of New York in which he agrees that the Institution, the Board of Regents, and each of the Regents is not liable or responsible for the acts and/or omissions, if any, of the Board of Trustees of the Heye Foundation prior to the transfer referenced in Article Fourth hereof and that the Institution, the Board of Regents and each of them have no responsibility to investigate or otherwise look into the proceedings of said Board of Trustees prior to said transfer and

B. Receipt by the Institution from the Heye Foundation of financial and other data which shall establish to the satisfaction of the Institution that the realizable value of the assets of the Heye Foundation to be transferred hereunder, exclusive of the collections, exceeds its liabilities.

Fourth. Not later than the ninetieth day following satisfaction of the conditions expressed in Articles Second and Third hereof and the provision of appropriations contemplated in Article Second B. hereof or at such time or times as may be agreed upon between the Heye Foundation and the Institution.

(A) the Board of Trustees shall be constituted and

(B) title to the collections listed in the schedules attached hereto, the endowment, and all other property of the Heye Foundation other than its interest in Audubon Terrace shall pass to the Institution for the benefit of the Museum. The Heye Foundation collections shall not be merged with those of the Institution and their identity shall be permanently preserved. Objects selected for display shall be of the highest quality and chosen with the purpose of ensuring the success of exhibitions in the State of New York and in the District of Columbia.

The Institution shall have the right to use the existing facilities of the Heye Foundation for purposes of the Museum without payment of rent, but subject to the payment of maintenance costs until the facilities described in subparagraphs (2), (3), and (4) of Article Second B. are available and the collections shall have been transferred thereto.

Fifth. Upon satisfaction of the conditions expressed in Articles Second and Third hereof and provision of the appropriations contemplated in Article Second B. hereof, the Secretary of the Institution shall initiate planning for and design of the museum facilities described in subparagraphs (2), (3) and (4) of said Article Second B. Plans for the design of the facilities shall be approved by the Secretary in consultation with the Board of Trustees and, should the

City and/or State of New York contribute to the cost of constructing the facility described in Article Second B(3), with representatives of the City and/or State of New York with respect to that facility.

Sixth. During the period between the date of this Memorandum and the time when title to said collections, endowment, and all other property shall pass to the Institution, the Heye Foundation shall care for the said collections and property and shall maintain its present insurance coverage against loss or damage to such property, it being understood, however, that in no event nor under any circumstances shall the Heye Foundation be liable for any loss or damage to its property, however caused, which is not compensated for by such insurance. The Heye Foundation shall pay all costs, premiums, and other charges incidental to such care and insurance.

Seventh. Anything herein contained to the contrary notwithstanding, from and after the date of this Memorandum and until title to the collections shall pass to and be vested in the Institution, the Heye Foundation may loan any of the objects or related material listed in the schedules attached hereto, and otherwise continue prudent operations.

Eighth. The income from the endowment of the Heye Foundation after transfer to the Institution and any funds realized from the sale of assets, objects, and related material in its collections shall be applied in a manner and to those ends as may be approved by the Board of Trustees of the Museum. Pending the use of said funds for such purposes, the Institution shall invest the endowment and such funds in a manner that it may determine from time to time, provided that the endowment and such funds, and the income therefrom, shall be maintained for the benefit of the Museum and accounted for separately from other funds of the Institution. Administrative fees to cover the costs of fund management and other support services for the Museum will be charged, consistent with established policy, by the Institution.

Ninth. Within the facilities described in subparagrahs (2) and (3) of Article Second B. hereof and in such other places and publications as may from time to time be appropriate, the Institution will memorialize the devotion of George Gustav Heye to the study of the indigenous peoples of the Western Hemisphere and inform the general public as well as the scholarly community of his efforts to establish the collections that are the foundation of the Museum.

Tenth. Anything herein contained to the contrary notwithstanding.

A. the Institution shall be relieved of any and all obligations imposed on it by this Memorandum of Understanding and shall not be regarded in breach hereof for failure to perform said obligations unless and until it shall have received appropriations or other funds paid over or given to it for the Museum sufficient to enable it to perform same and

B. the Institution shall not be responsible for the liabilities of the Heye Foundation existing at the time of the transfer referenced in Article Fourth hereof to the extent that such liabilities exceed unrestricted funds of the Heye Foundation transferred to the Institution.

Eleventh. This Memorandum of Understanding shall be terminable only by written agreement of the parties; provided that, if legislation containing provisions substantially as set forth in Article Second B. hereof is not duly adopted by the Congress of the United States and approved by the President within thirty (30) days after the close of the 101st Congress, this Memorandum of Understanding shall thereafter be terminable at any time on sixty days' written notice by either party to the other.

Twelfth. A. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of New York to the extent permitted under the Constitution and laws of the United States and under the jurisdiction of the United States District Court for the Southern District of New York.

B. This Memornandum of Understanding may be executed in two counterparts each of which shall be deemed the original if the other is not produced.

C. The Heye Foundation may assign its rights to enforce this Memorandum of Understanding to the Attorney General of the State of New York. Otherwise, this Memorandum of Understanding is not assignable.

In witness whereof, the Museum of the American Indian, Heye Foundation, pursuant to a resolution duly adopted by its Board of Trustees, has caused this Memorandum to be signed and its official seal to be hereunto affixed by its Chairman and the Smithsonian Institution, pursuant to a resolution duly adopted by its Board of Regents, has caused this Memorandum to be signed and its official seal to be hereunto affixed by its Secretary; all as of the date of signature of this Memorandum of Understanding by both parties.

TRUSTEES OF THE MUSEUM OF THE AMERICAN INDIAN, HEYE FOUNDATION,
(By) JULIE JOHNSON KIDD,
Chairman.

March 16, 1989.

SMITHSONIAN INSTITUTION,
(By) ROBERT MCC. ADAMS,
Secretary.

May 8, 1989.

○